

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN A. MARTIN,

VS.

Plaintiff,

No. CIV S-03-0466 FCD JFM P

CHERYL K. PLILER, et al,

Defendants.

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se, seeking relief pursuant to 42 U.S.C. § 1983. Plaintiff is an inmate at California State Prison-Sacramento (CSP-Sacramento), who filed an initial complaint on August 20, 2004, and an amended complaint on August 20, 2004. Plaintiff complains that defendant, [REDACTED] Academic Instruction at CSP-Sacramento, violated his rights under the First Amendment to the Constitution. Plaintiff argues that defendant unlawfully retaliated against him for filing a grievance, ultimately causing him to lose his job in the prison. Plaintiff seeks general, and special damages in the amount of \$250,000, unspecified punitive damages, the cost of this suit and reasonable attorneys fees, and such further relief as the court deems proper.

On December 1, 2005, defendant filed a motion for summary judgment. Plaintiff responded to defendants' motion on February 14, 2006. Defendant filed her reply on July 19, 2006.

1 In her motion, defendant argues that plaintiff has failed to offer any evidence that
2 defendant engaged in retaliatory action in violation of plaintiff's rights. In addition, defendant
3 states that plaintiff has not offered any evidence that defendant's actions caused plaintiff to lose
4 his job. Defendant also argues that plaintiff is unable to establish the absence of any legitimate
5 penological purpose to the adverse action taken against him. Finally, defendant contends that she
6 is entitled to qualified immunity because her actions did not violate a clearly established
7 constitutional right.

8 A. Summary Judgment Standards Under Rule 56

9 1. Legal Standard for Summary Judgment

10 Summary judgment is appropriate when it is demonstrated that the standard set
11 forth in Federal Rule of Civil Procedure (Fed. R. Civ. P.) 56(c) is met. "The judgment sought
12 shall be rendered forthwith if . . . there is no genuine issue as to any material fact, and . . . the
13 moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

14 Under summary judgment practice, the moving party

15 always bears the initial responsibility of informing the district court
16 of the basis for its motion, and identifying those portions of "the
17 pleadings, depositions, answers to interrogatories, and admissions
on file, together with the affidavits, if any," which it believes
demonstrate the absence of a genuine issue of material fact.

18 Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct., 2548, 2553 (1986). "[W]here the
19 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
20 judgment motion may properly be made in reliance solely on the 'pleadings, depositions, answers
21 to interrogatories, and admissions on file.'" Id. Indeed, summary judgment should be entered,
22 after adequate time for discovery and upon motion, against a party who fails to make a showing
23 sufficient to establish the existence of an element essential to that party's case, and on which that
24 party will bear the burden of proof at trial. See id. at 322, 106 S. Ct. at 2552. "[A] complete
25 failure of proof concerning an essential element of the nonmoving party's case necessarily
26 renders all other facts immaterial." Id. In such a circumstance, summary judgment should be

1 granted, “so long as whatever is before the district court demonstrates that the standard for entry
2 of summary judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323, 106 S. Ct. at 2553.

3 If the moving party meets its initial responsibility, the burden then shifts to the
4 opposing party to establish that a genuine issue as to any material fact actually does exist.

5 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 1356
6 (1986). In attempting to establish the existence of this factual dispute, the opposing party may
7 not rely upon the allegations or denials of its pleadings but is required to tender evidence of
8 specific facts in the form of affidavits, and/or admissible discovery material, in support of its
9 contention that the dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11,
10 106 S. Ct. at 1356 n. 11. The opposing party must demonstrate that the fact in contention is
11 material, i.e., a fact that might affect the outcome of the suit under the governing law, see
12 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986); T.W. Elec.
13 Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9thCir. 1987), and that the
14 dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the
15 nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9thCir. 1987).

16 In the endeavor to establish the existence of a factual dispute, the opposing party
17 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
18 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
19 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
20 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
21 genuine need for trial.’” Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356 (quoting Fed. R. Civ. P.
22 56(e) advisory committee’s note on 1963 amendments).

23 In resolving the summary judgment motion, the court examines the pleadings,
24 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
25 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
26 477 U.S. at 255, 106 S. Ct. at 2513. All reasonable inferences that may be drawn from the facts

1 placed before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S.
2 at 587, 106 S. Ct. at 1356. Nevertheless, inferences are not drawn out of the air, and it is the
3 opposing party's obligation to produce a factual predicate from which the inference may be
4 drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D.Cal. 1985),
5 aff'd, 810 F.2d 898, 902 (9thCir. 1987). Finally, to demonstrate a genuine issue, the opposing
6 party "must do more than simply show that there is some metaphysical doubt as to the material
7 facts Where the record taken as a whole could not lead a rational trier of fact to find for the
8 nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587, 106 S.Ct.
9 1356 (citation omitted).

10 On October 22, 2004, the court advised plaintiff of the requirements for opposing
11 a motion pursuant to Rule 56 of the Fed. R. Civ. P.. See Rand v. Rowland, 154 F.3d 952, 960-1
12 (9thCir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999), and Klingele v. Eikenberry, 849
13 F.2d 409 (9thCir. 1988).¹

14 2. Discussion

15 a. Facts

16 Defendant is the Supervisor of Academic Instruction at CSP-Sacramento. In this
17 position, defendant is responsible for overseeing the libraries, academic instruction programs,
18 recreation, and inmate television at CSP-Sacramento. At all times relevant to this suit, she
19 occupied that position.

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22 ¹Defendant argues that plaintiff has not complied with the requirements for responding to
23 a motion for summary judgment. Specifically, defendant complains that plaintiff failed to
24 reproduce defendant's undisputed facts and respond accordingly. As a result, defendant contends
25 that ascertaining the true facts as they apply to this motion is difficult. Defendant states that this
26 alone supports granting the motion for summary judgment. The court disagrees. Dismissal on
this basis is not warranted in this case. While it is true that plaintiff did not respond as required
in the local rules, plaintiff demonstrated no prejudice as a result. Indeed, plaintiff's surrebuttal
was well briefed. Furthermore, the court was able to distill the relevant facts from all of the
documents in this case in order to issue its findings and recommendations.

1 Plaintiff started working at the CSP-Sacramento B-facility law library in 1992.
2 After beginning as a porter, a custodian at the library with other duties as assigned, plaintiff
3 eventually became a library law clerk. Among his duties as a law clerk, plaintiff was responsible
4 for providing requested legal materials and other assistance to law library users. Plaintiff signed
5 numerous statements affirming that he was aware of his duties and the consequences for failing
6 to meet performance expectations. The last of these statements was signed on July 1, 2000.

7 Inmates are permitted to assist other inmates with legal matters. CAL. CODE REGS.
8 tit.xv, § 3163. However, employees of the law library are prohibited from providing legal advice
9 while at work. The reason for this prohibition is to reduce liability for CSP-Sacramento
10 employees, limit the potential for disputes, and to ensure inmates have the time needed to
11 perform their required duties. In addition, the prohibition prevents inmates from charging for
12 services they are already obligated to perform.

13 On October 26, 2000, while at work, plaintiff was sent by his immediate
14 supervisor to assist two inmates in lock down with a habeas corpus filing. Plaintiff prepared the
15 required paperwork in pencil, giving it to Inmate Quintana to complete in pen and file on behalf
16 of Inmate Lara. This process took approximately 20 minutes, after which plaintiff returned to the
17 library to complete his workday.

18 Inmate Lara submitted his habeas filing to the prison law library for photocopying.
19 This request was denied by the senior librarian in B-facility, Mr. McCarger, as the filing did not
20 comply with prison requirements. The filing was returned to Inmate Lara along with the reason
21 for its rejection.

22 Upon receipt of the rejection, plaintiff submitted a California Department of
23 Corrections Form 602 (CDC 602) appealing the denial of photocopying services. This appeal,
24 lodged on November 8, 2000, stated that plaintiff had prepared the habeas filing on behalf of
25 Inmate Lara. Consequently, "as his attorney," plaintiff had a right to have copies made of
26 whatever legal documents he deemed important for the prosecution of the habeas petition. (Pl.'s

1 Decl. Supp. Opp. Mot., App. H.) According to plaintiff, the denial of photocopy services was an
2 arbitrary abuse of power by Mr. McCarger in violation of state and federal law. Plaintiff wrote in
3 his appeal that Mr. McCarger should “back off,” and that plaintiff’s job was to ensure that
4 “inmates rights are not being violated in having access to the courts, and to assist them.” Id.

5 On January 3, 2001, in preparation of his response to plaintiff’s CDC 602, Mr.
6 McCarger consulted with defendant and informed her that plaintiff had been told on numerous
7 occasions that he was not permitted to provide legal advocacy while at work. On that same day,
8 defendant reported plaintiff for a serious rules violation and prepared a notice of classification
9 hearing. Both documents were served on plaintiff two weeks later. The order to appear before
10 the classification committee was to consider removal from the work program and, if upheld,
11 termination of plaintiff’s employment as a clerk at the law library. As support for the
12 classification hearing and removal, defendant attached a copy of a rules violation report (RVR).

13 In the RVR, defendant stated that plaintiff had compromised his position as a law
14 clerk by giving legal advice. The rules violation cited performance as the basis for the offense.
15 According to the RVR, plaintiff had been warned on numerous occasions that the giving of legal
16 advice was against prison regulations. As a result of “disregard[ing] the terms of his employment
17 in the library, [and] fail[ing] to follow direct orders,” defendant suspended plaintiff from his
18 position as a law clerk pending the classification hearing. Attached to the RVR upon its
19 presentation to plaintiff was a copy the CDC 602 he filed contesting denial of the habeas
20 photocopies.

21 Upon consideration of the RVR, a senior hearing officer at CSP-Sacramento
22 found plaintiff guilty on January 25, 2001, of failing to meet job expectations, CAL. CODE REGS.
23 tit.xv, § 3041(d), reducing the violation from a serious offense to an administrative violation.
24 This finding was based on the fact that plaintiff admitted to helping an inmate prepare his habeas
25 appeal. Additional support for the ruling was found in a statement made by defendant at the
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1 RVR hearing that plaintiff had been warned about providing legal assistance to other inmates
2 while at work.

3 In his report, the hearing officer made several special notations. In particular, the
4 hearing officer found that plaintiff did not violate any regulations by dispensing legal advice, as
5 prison regulations permit inmates to assist one another with legal matters. Rather, the hearing
6 officer found that plaintiff misused his work time by helping an inmate prepare an appeal during
7 the time that he was supposed to be performing other assigned duties. The hearing officer
8 specifically noted that plaintiff was not charged in the RVR for filing his CDC 602 and that any
9 appeal in that case would proceed separately.

10 And proceed it did. On January 3, 2001, the CSP-Sacramento appeals
11 coordinator rejected plaintiff's CDC 602 appeal for the first time. In his rejection, the appeals
12 coordinator stated that the appeal was rejected because prison regulations state that an inmate
13 may not prepare a CDC 602 appeal on behalf of another inmate. In this case, the rejected
14 photocopy request was made by Inmate Lara; however, plaintiff filed the CDC 602 appealing that
15 rejection. Plaintiff pursued a second appeal on January 5, 2001. The appeals coordinator
16 rejected this appeal on the same grounds on February 2, 2005. Plaintiff filed a third appeal on
17 February 19, 2001. This appeal was also rejected.

18 Upon completion of the several concurrent administrative proceedings, plaintiff
19 waited for his review by the classification committee to determine whether he would retain his
20 position as a clerk at the B-facility law library. This position was continued during an annual
21 review on May 22, 2001. In that classification hearing, the committee noted plaintiff's RVR, yet
22 determined that he should continue with his employment.

23 On June 4, 2001, plaintiff was removed from his position as a law clerk, along
24 with all of his fellow employees in the B-facility law library, after weapons were found in the
25 library. Plaintiff was put on administrative segregation during the investigation into the weapons
26 incident. Plaintiff was ultimately not implicated in the weapons issue; however, plaintiff

1 remained on administrative segregation because of other misconduct discovered during the
2 course of the investigation. This additional matter concerned familiar relations with library staff,
3 and was resolved on August 31, 2001, when the allegation against plaintiff was not substantiated.
4 In spite of the unsubstantiated allegations, plaintiff did not resume employment in the law library.

5 b. Retaliation for Exercise of First Amendment Rights

6 The Fourteenth Amendment right of access to the courts survives confinement.

7 Bounds v. Smith, 430 U.S. 817, 821-22, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). Punishment
8 administered against someone exercising their right to access to the courts may violate the First
9 Amendment. Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985). Actions that chill an
10 inmate's right to file grievances are sufficient to raise a claim of retaliation. Bruce v. Ylst, 351
11 F.3d 1283, 1288 (9th Cir. 2004)

12 Prisoner's raising a claim of retaliation under 42 U.S.C. § 1983 must establish
13 five elements: (1) an assertion that a state actor took some adverse action against an inmate (2)
14 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
15 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
16 legitimate correctional goal. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); see e.g.
17 Resnick v. Hayes, 213 F.3d 443, 449 (9th Cir. 2000); Barnett v. Centoni, 31 F.3d 813, 815-16
18 (9th Cir. 1994). Defendant has failed in her motion to show that no material issue of fact exists
19 on any of these elements and that she is entitled to judgment as a matter of law. Summary
20 judgment is not appropriate.

21 i. Adverse Action

22 There is ample evidence that prison officials took adverse action against plaintiff.
23 An RVR was filed by defendant against plaintiff in January 2001. In addition, defendant
24 reported plaintiff to the classification committee and requested that he be removed from his
25 position as a law clerk. Finally, plaintiff was ultimately placed in administrative segregation and
26 lost his job in the law library as a result. While such actions may not appear severe, a particular

1 sanction need not be great in order to find that rights have been violated. See Hyland v. Wonder,
2 972 F.2d 1129, 1135 (9th Cir. 1992). There is sufficient evidence to conclude that defendant took
3 adverse action against plaintiff.

4 ii. Retaliatory Action

5 A genuine issue of material fact exists with regards to the true reason why
6 plaintiff suffered any adverse action. While defendant contends otherwise, plaintiff has put
7 forward credible evidence that the timing of defendant's adverse action, the nature of its
8 enforcement, and the motivation behind it, support an inference of retaliatory intent. There is
9 considerable dispute between the parties on this issue that precludes summary judgment.

10 Plaintiff has offered multiple pieces of evidence to prove his contention of
11 unlawful retaliation. Some inference could be drawn by a rational fact-finder that the timing of
12 the RVR and plaintiff's subsequent removal from the law library was the result of his filing of
13 the CDC 602. "Timing can properly be considered as circumstantial evidence of retaliatory
14 intent." Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995).

15 Defendant filed the RVR nearly six weeks after plaintiff made his CDC 602
16 appeal, and only after she became aware that it had been filed. Furthermore, according to the
17 RVR, plaintiff had been warned on numerous occasions in his seven years in the law library
18 about giving legal advice while on duty. However, in none of the prior occasions was plaintiff
19 punished. Only after filing his grievance was an RVR completed. While the reasons for this
20 RVR may be perfectly legitimate in light of the admissions contained in the CDC 602, its timing
21 is suspect in light of other evidence in the record that such behavior had previously been tolerated
22 by prison officials.

23 Along with the timing of the RVR, retaliatory intent is supported by additional
24 evidence in the record. Confusion over the true nature of plaintiff's duties leaves open a
25 reasonable inference of unlawful retaliation. Plaintiff's job description as a law clerk states that
26 he will "give assistance to law library users." (Pl.'s Decl. Supp. Opp. Mot., App. E.) The

1 hearing officer adjudicating plaintiff's RVR noted the tension between this description and the
2 prison regulations that prohibit law clerks from providing legal advocacy while on duty. (Pl.'s
3 Decl. Supp. Opp. Mot., App. I.) The very nature of plaintiff's confusing job description, along
4 with his history of receiving only warnings when told on prior occasions about the regulation
5 prohibiting advocacy, creates a genuine issue as to the motivation behind defendant's conduct
6 that can only be decided by a finder of fact.

7 In addition, plaintiff asserted that he was told by personnel in the prison and
8 employees in the law library that defendant intended to punish him for filing his grievance. (Pl.'s
9 Decl. Supp. Opp. Mot. 26.) It is undisputed that defendant filed the classification report
10 requesting that plaintiff be removed from his position in the law library. (Pl.'s Decl. Supp. Opp.
11 Mot., App. I.) The classification report cites to the RVR that was also completed by defendant,
12 and included the CDC 602 as an attachment. Id.

13 In spite of defendant's request to remove plaintiff from his position as a law clerk,
14 the classification committee returned plaintiff to the library on May 22, 2001. (Pl.'s Decl. Supp.
15 Opp. Mot., App. O.) Plaintiff presented evidence that defendant became upset upon learning that
16 plaintiff had returned to the library and that he was subsequently ordered to return to his cell.
17 (Pl.'s Decl. Supp. Opp. Mot. 26.) Two weeks later, plaintiff was removed and placed in
18 administrative segregation, along with the rest of the staff as a result of weapons that were found
19 in the library. (Def.'s Mot. Summ. J. App. H.) After it was determined that there was
20 insufficient evidence to support any charge against plaintiff based on the weapons violation,
21 (Pl.'s Decl. Supp. Opp. Mot., App. W.), plaintiff did not return to his job, but rather, remained on
22 administrative segregation pending an investigation into familiar behavior with a staff member.
23 Id. On August 31, 2001, this charge was also found to be not substantiated. Id.

24 In spite of these facts, plaintiff was not permitted to return to his former position
25 in the law library. However, plaintiff has provided some evidence that fellow clerks were
26 permitted to return to their former jobs. (Pl.'s Decl. Supp. Opp. Mot. 31.) In addition, there is

1 some evidence of statements by prison personnel that defendant raised the unsubstantiated claim
2 of familiar behavior. (Pl.'s Decl. Supp. Opp. Mot. 27.) Assuming all of these facts in favor of
3 the nonmoving party, such allegations raise triable issues about the basis of plaintiff's RVR and
4 the loss of his employment in the law library. See Bruce, 351 F.3d at 1289.

5 Defendant argues that the RVR and classification review were filed because of
6 actions admitted to in the CDC 602, not for the act of filing the appeal. While such an argument
7 may ultimately bear fruit at trial, a logical inference can be drawn from the near simultaneous
8 nature of the reporting of the appeal to defendant and her filing of the RVR, that the two
9 incidents are connected. The same inference can be drawn from plaintiff's return to the library
10 and subsequent removal only two weeks later. The simple fact that defendant took action in a
11 forum separate from that in which lodged his initial complaint does not insulate that action from
12 scrutiny.

13 Defendant's contention that finding a retaliatory motive when admissions
14 discovered in a CDC 602 appeal are used as the basis for an RVR will shield inmates from
15 punishment is unavailing. The critical inquiry under the relevant analysis is the purpose for the
16 action. Purpose is determined by the finder of fact based upon all of the evidence in the record,
17 including the ultimate action taken, surrounding circumstances, and timing, not just the source of
18 the information about the rules violation.

19 When viewed in the light most favorable to the non-moving party, plaintiff has
20 offered proof to demonstrate an improper motive for the actions taken by defendant. The timing
21 of the adverse actions, the confusing nature of plaintiff's job description, statements made by
22 fellow employees and prison staff about the reasons for the disciplinary action, and subsequent
23 hiring decisions in the law library, are all some proof of retaliation. In this case, plaintiff has
24 provided sufficient evidence of the circumstances surrounding the adverse actions taken against
25 him to show that a genuine issue of fact exists with regards to the motives behind defendant's
26 actions.

1 iii. Prisoner's Protected Conduct

2 Defendant concedes that the filing of a prison grievance is a constitutionally
3 protected activity. (Def.'s Mot. Summ. J. 7.)

4 iv. Chilled Exercise of First Amendment Rights

5 Plaintiff has filed numerous grievances since receiving his RVR and losing his job
6 in the B-facility law library. According to defendant, plaintiff's vigorous utilization of his
7 administrative grievance procedure is evidence that plaintiff's speech has not been chilled by any
8 government conduct. This argument is without merit.

9 An inmate need not prove a total chilling of their protected speech in order to
10 pursue a retaliation claim. Rhodes, 408 F.3d at 568. The proper test for determining whether
11 official acts chill or silence speech is to ask whether "a person of ordinary firmness" would be
12 intimidated from future First Amendment activities. Mendocino Environmental Center v.
13 Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999). There is no requirement that one
14 demonstrate that their speech was actually inhibited or suppressed. Id. Plaintiff has raised a
15 credible allegation of a chilling effect as a result of defendant's conduct that is sufficient to create
16 a genuine issue of material fact.

17 v. Legitimate Penological Goal

18 The prisoner bears the burden of pleading and proving the absence of legitimate
19 penological goals for the complained of conduct. Pratt, 65 F.3d at 806. Plaintiff has done so in
20 this case. There is sufficient evidence of improper motivation, questionable timing, and targeted
21 action to support plaintiff's allegations regarding a lack of penological purpose.

22 Defendant argues that the need to comply with prison regulations and prison
23 safety precipitated the RVR, administrative segregation, and loss of employment. In light of the
24 evidence of retaliation offered by plaintiff, this argument is unavailing. "[P]rison officials may
25 not defeat a retaliation claim on summary judgment simply by articulating a general justification
26 for a neutral process when there is a genuine issue of material fact as to whether the action was

1 taken in retaliation for the exercise of a constitutional right.” Bruce, 351 F.3d at 1289. Such
2 genuine issues exist in this case.

3 Defendant argues that plaintiff was placed in administrative segregation and
4 removed from his job as a law clerk because of evidence unrelated to his CDC 602 appeal.
5 While plaintiff may have ultimately ended up where he belonged, if he arrived there as a result of
6 improper retaliation, it cannot be said that any legitimate penological goal is being served. Bruce
7 351 F.3d at 1289; see also Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985)(“[P]laintiff has
8 alleged that [prison officials’ actions] were retaliatory and were arbitrary and capricious. He has
9 thereby sufficiently alleged that the retaliatory acts were not a reasonable exercise of prison
10 authority and that they did not serve any legitimate correctional goal.”) While neutral reasons
11 may support the adverse action taken against plaintiff, he has raised sufficient evidence of
12 retaliation. Deducing the true motivation behind such actions is best left to the finder of fact.

13 c. Qualified Immunity

14 Defendant argues that she has qualified immunity from suit. This argument is
15 without merit. Plaintiff has establish sufficient factual issues to preclude any application of
16 qualified immunity.

17 Analyzing a claim of qualified immunity requires the court to determine what
18 right has been violated, whether the right was clearly established so that a reasonable official
19 would have been aware that her conduct violated constitutional bounds, and whether a reasonable
20 public official could have believed that her conduct was lawful. See Newell v. Sauser, 79 F.3d
21 115, 117 (9th Cir. 1996). As shown above, plaintiff has demonstrated that material issues of fact
22 exist with regards to the constitutionality of defendant’s behavior. Plaintiff has put forth a valid
23 claim that his First Amendment right was violated by defendant’s retaliatory behavior.

24 Furthermore, defendant cannot argue that the right was not clearly established. For
25 purposes of qualified immunity, the prohibition against retaliatory punishment is clearly

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1 established law in the Ninth Circuit. Hydrick v. Hunter, 449 F.3d 978, 994 (9th Cir. 2006); Pratt
2 v. Rowland, 65 F.3d 802, 806 & n.4 (9th Cir. 1995).

3 Similarly, defendant has no basis upon which to argue that she believed her actions
4 as alleged were lawful. A reasonable prison official can believe their adverse action is lawful if it
5 was in support of a legitimate penological goal and the means were narrowly tailored to achieve
6 that goal. Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995). Legitimate penological goals
7 advanced by defendant include protection from liability, the preservation of order within the
8 prison, maintenance of internal discipline, and security. However, given the fact that plaintiff's
9 right to be free from retaliation is clearly established, the immunity defense should ordinarily fail.
10 Harlow v. Fitzgerald, 457 U.S. 800, 818-19, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). A
11 reasonable public official should know the law governing their conduct. Id.

12 The facts in this case do not support a deviation from this general proposition.
13 Plaintiff has presented evidence of a retaliatory motive for defendant's behavior. Coupling that
14 motive in otherwise legitimate penological goals does not infuse it with the protections of
15 qualified immunity.

16 B. Conclusion

17 Plaintiff presented evidence that defendant retaliated against him because of his
18 exercise of rights protected under the Constitution. Defendant counters that her actions were a
19 valid application of her authority that was necessary to support the legitimate penological goals of
20 CSP-Sacramento. There are genuine issues of material fact in this case that can only be resolved
21 by a judge or jury. Defendants have not demonstrated that they are entitled to judgment as a
22 matter of law.

23 Accordingly, IT IS HEREBY RECOMMENDED that defendants' summary
24 judgment motion be denied.

25 These findings and recommendations are submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten

1 (10) days after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
4 shall be served and filed within ten (10) days after service of the objections. The parties are
5 advised that failure to file objections within the specified time may waive the right to appeal the
6 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: August 16, 2006.

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10 UNITED STATES MAGISTRATE JUDGE

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